



Australian Government
Classification Board

**DECLARATION FOR THE MODIFICATION OF
CONDITIONAL CULTURAL EXEMPTION REQUIREMENTS**

Applicant: RMIT School of Media and Communication

Decision Maker: Margaret Anderson, Director, Classification Board

Legislative Basis: This decision is made under subsection 6H(1)(b) of the *Classification (Publications, Films and Computer Games) Act 1995* (the **Act**)

I have considered the application from RMIT School of Media and Communication (the **Applicant**) received on 4 June 2020. The Applicant sought exemption from the 'four screenings rule' as set out in subsection 6C(e) of the Act and clause 6(1) of the *Classification (Publications, Films and Computer Games) (Conditional Cultural Exemption Rules) Instrument 2015* (the **Instrument**) as it applies to 15 unclassified films to be streamed live as part of **The New Normal International Film Festival** (the **Festival**). The films are: *Bless You!*; *Everybody Shut Up*; *Deserted Streets of Amsterdam*; *The Box*; *Nowadays*; *Pocket*; *Upload to Story*; *Hashtag Perfect Life*; *Selfies*; *I see in the Dark*; *Backing Up Bilitis*; *And We Won*; *Horror Vacui*; *Floreana* and *Kukli*.

Issue

Owing to the responses to the COVID-19 global pandemic by the Commonwealth, State and Territory governments that have temporarily closed cinemas, the Applicant proposes conducting a festival, which is a culmination of an undergraduate course at the RMIT School of Media and Communication entitled '*The Festival Experience*', in a livestreaming-style format, using the Amazon-owned platform *Twitch.tv*, from **Thursday, 4 June 2020 to Saturday, 6 June 2020**. The proposed program provided by the Applicant indicates that the live streaming-style format consists of the following three sessions; *Isolation*, *Technology*, and *Society*, with each session (approximately 2-hours long) consisting of four, five and six films respectively. Further, the Applicant has advised that each film will be streamed live once only, as outlined in **Table 1: Screening Schedule**, and free of charge to the viewer.

Table 1: Screening Schedule

Session		Session Date / Time	Film Title	Run Time (mins)	Audience Age Restrictions (MA 15+ or R 18+)
1	Isolation	Thursday, 4 th June 2020 7.30pm	Bless You! (aka Na Zdrowie)	5	MA 15+
			Everybody Shut Up	13	MA 15+
			Deserted Streets of Amsterdam	2	MA 15+
			The Box	11	MA 15+
2	Technology	Friday,	Nowadays	7	R 18+

Session		Session Date / Time	Film Title	Run Time (mins)	Audience Age Restrictions (MA 15+ or R 18+)
		5 th June 2020 7.30pm	Pocket	17	R 18+
			Upload to Story (aka Pa Din Story)	11	R 18+
			Hashtag Perfect Life	12	R 18+
			Selfies	4	R 18+
3	Society	Saturday, 6 th June 2020 7.30pm	I See in the Dark (aka Tudi Jaz Vidim)	16	MA 15+
			Backing up Bilitis	12	MA 15+
			And We Won	5	MA 15+
			Horror Vacui	3	MA 15+
			Floreana	4	MA 15+
			Kukli	25	MA 15+

Considerations

The 'four screenings rule'

Section 6C of the Act provides for material that is demonstrated, exhibited or screened as part of a registered event to be subject to a Conditional Cultural Exemption (CCE), if certain criteria are met.

Subsection 6C(e) of the Act requires that the relevant material not be exhibited, demonstrated or screened more than the number of times specified in the Instrument. Subsection 6(1) of the Instrument provides that the relevant material, if a film, *must not* be exhibited, demonstrated or screened *more than four times*, per state or territory, as part of the registered event.

Clearly, the legislation has been drafted in contemplation of a festival taking place in a fixed physical venue. Accordingly, certain matters arise to be considered in the context of an online festival and the CCE framework.

Director's powers under subsection 6H of the Act

Under subsection 6H(1)(a) of the Act, I may, if I consider it appropriate to do so, exempt a particular publication, film, computer game, event or organisation from any or all provisions of either Division 2 of Part 1A of the Act, or of the Instrument.

Alternatively, under subsection **6H(1)(b)**, I may declare that any or all provisions of Division 2 of Part 1A of the Act, or of the Instrument, apply, subject to modifications; that is, I may amend the requirements as they apply to a particular publication, film, computer game, event or organisation.

I may only exercise these powers upon application, and the RMIT School of Media and Communication has made an application.

The Act and the Instrument do not require me to consider any specific matters in determining whether to grant an exemption from, or a modification to, the requirements.

I have turned my mind to various matters, including but not limited to:

*1. The purpose of **The New Normal International Film Festival** (the **Festival**) and its film program*

The students of the course in Semester 1, 2020, conceived the Festival.

The Festival is the culmination of an undergraduate course at the RMIT School of Media and Communication entitled '*The Festival Experience*' in which students conceive of, and mount, a film festival in miniature.

A total of 15 films will constitute the Festival and it is proposed that they will be streamed live digitally. The Applicant is using the Amazon-owned platform *Twitch.tv* to host the Festival. As per the *Program Table* supplied by the Applicant, the films will only be screened once.

2. The 'four screenings rule'

Regarding the four screenings rule, this geographic requirement is clearly not designed for an online environment. While there may be an argument that each individual viewing of each film from a different device could itself be a separate showing of the film, I am inclined, instead, to the view that I am able to assess the restricted number of screenings by reference to when a film is shown by the Applicant, which in the case of this Festival, all 15 films are being screened once only and at a particular time as per **Table 1: Screening Schedule**, rather than by reference to different viewers or devices.

Accordingly, I am satisfied that the applicant is able to control the number of showings in order to satisfy the requirement of a restricted number of viewings per state and territory, per registered event.

3. Audience age restrictions for films

I note from the descriptions of the 15 unclassified films provided by the Applicant, that 10 films are likely to be classified M or MA 15+, whilst the remaining 5 films have an age restriction of R 18+. Accordingly, the 10 films likely to be classified M and MA 15+ and the 5 films likely to be classified R 18+ require age restrictions to be imposed – certainly at point of selection, and ideally also immediately prior to the films' screening.

Final decision

I have considered the material submitted by the Applicant and have decided to exercise my power under subsection 6H(1)(b) of the Act **to grant a declaration to approve this event**, as per the **Conditions** set out below, across all Australian jurisdictions for the films detailed in **Table 2: Approved films with audience age restrictions noted**.

I have reached this decision on the basis that the exemption sought by the Festival would not be in contradiction with the purpose of the National Classification Scheme (**NCS**) which is to ensure that content should generally be classified before it is exhibited or sold in Australia.

Further:

- It is my view that the policy intention of the four screening rule is to strike a balance between providing the community with access to diverse film content, and the overarching principle of the NCS that films should generally be classified before exhibition.
- The CCE arrangements complement the NCS by facilitating the exhibition of culturally important, unique and diverse unclassified material to audiences which may not otherwise have access to such content. Inaccessibility to content is further aggravated in 2020 by the physical-distancing constraints imposed upon people in response to the COVID-19 pandemic.
- The Federal Government has established certain rules which are required to be met for CCE exemptions to apply. My view is that I should not grant exemption from, or modifications to, the relevant provisions in the Act or the Instrument, *unless* I am satisfied there is a compelling reason or reasons to do so.
 - The constraints imposed upon cinema proprietors and film exhibitors by the response of various governments within Australia to the COVID-19 pandemic of 2020 resulting in the temporary but on-going closure of cinemas and theatres is a sufficient reason for me to consider granting exemption from or to modifying the CCE rules, requirements and/or restrictions.
 - Further, in the case of this Festival, it is part of course work for students at the RMIT and they should be assisted to have a holistic film festival experience.
 - In this regard, I have therefore considered the exemptions and the declaration sought in the context of a digitally-delivered film festival and note that the Festival is restricting the number of screenings of the unclassified films as per **Table 1: Screening Schedule**, and that age restrictions on unclassified films shall still be satisfied.

Table 2: Approved films with audience age restrictions noted contains the proposed film schedule listing the 15 unclassified films approved to be streamed live via the Amazon-owned platform Twitch.tv.

Table 2: Approved films with audience age restrictions noted

	Film Title	Run Time (mins)	Audience Age Restrictions (MA 15+ or R 18+)
1	Bless You! (aka Na Zdrowie)	5	MA 15+
2	Everybody Shut Up	13	MA 15+
3	Deserted Streets of Amsterdam	2	MA 15+
4	The Box	11	MA 15+
5	Nowadays	7	R 18+
6	Pocket	17	R 18+

	Film Title	Run Time (mins)	Audience Age Restrictions (MA 15+ or R 18+)
7	Upload to Story (aka Pa Din Story)	11	R 18+
8	Hashtag Perfect Life	12	R 18+
9	Selfies	4	R 18+
10	I See in the Dark (aka Tudi Jaz Vidim)	16	MA 15+
11	Backing up Bilitis	12	MA 15+
12	And We Won	5	MA 15+
13	Horror Vacui	3	MA 15+
14	Floreana	4	MA 15+
15	Kukli	25	MA 15+

Conditions:

1. The films specified above in **Table 2: Approved films with audience age restrictions noted** shall be streamed online once, via the Amazon-owned platform *Twitch.tv*, only under the auspices of the Festival from **Thursday, 4 June 2020 to Saturday, 6 June 2020**.
2. For the purposes of section 6C(f) of the Act and section 6(2) of the Instrument, a clear and legible notice must be prominently and publicly displayed at the relevant showing of a film regarding any audience age restrictions that apply in relation to access to the relevant material. In regards to this online film festival, this requirement will be satisfied *so long as* the age restrictions are clearly displayed or referred to on a portion of the Festival's website (<https://newnormaliff.com/>) – or at the point of accessing the permission to view the relevant film. **If possible**, the age restriction should be repeated in a “pre-roll” prior to the film downloading and playing. The following age restrictions apply to the films set out in **Table 3: Audience Age Restrictions** and must be adhered to:

Table 3: Audience Age Restrictions

	Film Title	Audience Age Restriction (15 or 18 years)
1	Bless You! (aka Na Zdrowie)	Persons aged under 15 years are not present at the relevant showing unless accompanied by an adult
2	Everybody Shut Up	Persons aged under 15 years are not present at the relevant showing unless accompanied by an adult
3	Deserted Streets of Amsterdam	Persons aged under 15 years are not present at the relevant showing unless accompanied by an adult
4	The Box	Persons aged under 15 years are not present at the relevant showing unless accompanied by an adult
5	Nowadays	Only persons aged 18 years and over are present at the relevant showing

	Film Title	Audience Age Restriction (15 or 18 years)
6	Pocket	Only persons aged 18 years and over are present at the relevant showing
7	Upload to Story (aka Pa Din Story)	Only persons aged 18 years and over are present at the relevant showing
8	Hashtag Perfect Life	Only persons aged 18 years and over are present at the relevant showing
9	Selfies	Only persons aged 18 years and over are present at the relevant showing
10	I See in the Dark (aka Tudi Jaz Vidim)	Persons aged under 15 years are not present at the relevant showing unless accompanied by an adult
11	Backing up Bilitis	Persons aged under 15 years are not present at the relevant showing unless accompanied by an adult
12	And We Won	Persons aged under 15 years are not present at the relevant showing unless accompanied by an adult
13	Horror Vacui	Persons aged under 15 years are not present at the relevant showing unless accompanied by an adult
14	Floreana	Persons aged under 15 years are not present at the relevant showing unless accompanied by an adult
15	Kukli	Persons aged under 15 years are not present at the relevant showing unless accompanied by an adult

Appeal provisions

In accordance with subsection 6H(6) of the Act, applications for review of this decision may be made to the Administrative Appeals Tribunal (**AAT**) which provides an independent merits review. Information on how to apply to the AAT and the fees and time limits for making such applications is available from the AAT's website (www.aat.gov.au).


 Margaret Anderson
 Director
 04 June 2020